

Providian Financial Group and its insurance carrier, American Protection Insurance Co. (referred to jointly as "Providian" hereafter), ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Hann's award of benefits to Ms. P. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. P. claims workers' compensation benefits for a back injury resulting from a work accident at Providian on February 12, 2002. Judge Hann held an evidentiary hearing on Ms. P.' claim on April 5, 2005, and then issued her decision awarding benefits to Ms. P. on April 8, 2005. Specifically, Judge Hann concluded that Ms. P. was entitled to benefits for the exacerbation of her work-related back injury that was triggered by subsequent non-work events. In its motion for review, Providian challenges Judge Hann's conclusion.

FINDINGS OF FACT

The Appeals Board affirms and adopts Judge Hann's findings of fact. As material to the issue now before the Appeals Board, the facts can be summarized as follows.

Ms. P. injured her low back while working for Providian on February 12, 2002. As a result of the work injury, she underwent lumbar fusion surgery on August 28, 2002. Thereafter, while Ms. P. was recovering from her first back surgery, she was involved in three non-work events. On February 3, 2003, she slipped and almost fell in her bathtub. During March 2003 she accidentally stepped in a small hole in her lawn. During June or July 2003, a folding chair collapsed as she was sitting down. However, a friend was able to hold her arm and prevent her from falling to the ground.

After these incidents, x-rays revealed possible damage to one of the screws that had been placed in Ms. P.' spine during her first surgery. On October 8, 2003, she underwent a second repair surgery. This surgery revealed that one of the screws had fractured and that her spine had failed to fuse. The second surgery successfully corrected these problems and Ms. P. reached medical stability by May 4, 2004. As a result of the second surgery, Ms. P. suffered an additional 2% whole person impairment.

DISCUSSION AND CONCLUSIONS OF LAW

Section 34A-2-401 of the Utah Workers' Compensation Act requires employers and their insurance carriers to provide workers' compensation benefits for employees injured by accident arising out of and in the course of employment. Thus, Providian is liable for workers' compensation benefits arising from Ms. P.' work accident and injuries of February 12, 2002. What is in dispute is whether Providian is also liable for the exacerbation of Ms. P.' original injuries that resulted from the subsequent non-work events of February through July, 2003.

The same issued was recently addressed by the Utah Court of Appeals in *McKesson Corp. v. Labor Commission*, 41 P.3d 468, 472 (Utah App. 2002):

To qualify for additional benefits after suffering a subsequent aggravation to a compensable workplace injury, a claimant need only prove that his subsequent injury is a natural result of his compensable primary injury. Furthermore, a claimant need not show that his original tragedy was the sole cause of his subsequent injury. Indeed, if the claimant can show that the initial work-related accident is merely a contributing cause of the subsequent injury, the claimant has met his burden. (Internal quotations and citations omitted.)

In Larson's Workers' Compensation Law, §10.15, p. 10-12, Professor Larson reviews decisions from several states, including Utah, and concludes the following test should be applied in cases such as Ms. P.' claim.

When . . . the injury following the initial compensable injury does not arise out of a quasi-course activity,¹ . . . the chain of causation may be deemed broken by either intentional or negligent claimant misconduct.

While the Appeals Board notes Providian's extensive attempt to import tort concepts of "negligence" into this workers' compensation case, the Appeals Board finds Providian's argument unpersuasive. The workers' compensation and tort systems are fundamentally different and, to the limited extent that the term "negligence" is used at all in workers' compensation proceedings, its meaning must be understood in a way that is consistent with the fundamental principles of the workers' compensation system. In particular, Professor Larson has explained that, for workers' compensation purposes, an injured worker's "negligence" can break the causal connection between a work-related injury and subsequent exacerbations of that injury if the injured worker has rashly undertaken a line of action "with knowledge of the risk created by the weakened member." Larson at §10-06(3), p. 10-18.

Applying the foregoing standards to Ms. P.' circumstances, the evidence establishes that her work injury in February 2002 required fusion surgery. While still recovering from that surgery, she experienced three non-work events that acted on her still-healing spine and exacerbated the original work injury. As a result, Ms. P. required a second surgery which produced an additional 2% permanent impairment.

In considering whether Ms. P.' three non-work events are sufficient to break the chain of causation between her original work accident and her subsequent surgery, the Appeals Board finds

¹ In using the term "quasi course," Professor Larson refers to ". . . activities undertaken by the employee following upon his or her injury which, although they take place outside the time and space limits of the employment, and would not be considered employment activities for usual purposes, are nevertheless related to the employment in the sense that they are necessary or reasonable activities that would not have been undertaken but for the compensable injury." Quasi-course activities included activities such as trips to doctors' offices, taking medicine and similar activities. See Larson's Workers' Compensation, §10-05, p. 10-11.

no evidence that the three events were the result of any rash or foolhardy conduct by Ms. P.. To the contrary, Ms. P. was engaged in normal day-to-day activities such as washing her hair, walking on her lawn, and sitting down on a folding chair. Such activities did not break the chain of causation between her original work accident and her second surgery. The Appeals Board therefore concludes that the injuries for which Ms. P. now seeks benefits are compensable.

ORDER

The Appeals Board affirms Judge Hann's decision and denies Providian's motion for review. It is so ordered.

Dated this 20th day of January, 2006.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch